



W.P.No.18133 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18133 of 2016
and W.M.P.No.15902 of 2016

Balagovinda Rao

... Petitioner

Vs.

1.The Chief Engineer,
Chennai Port Trust,
Chennai.

2.The Secretary,
Chennai Port Trust,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling of the proceedings of 1st respondent in its No.E6/5302/1996/E dated 10.05.2016 and quash the same.

For Petitioner : Mr.V. Vijay Shankar

For Respondents : Mr.M. Palanimuthu

ORDER



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The petitioner herein was appointed as a Mazdoor in the respondents/Chennai Port Trust, in the year 1984 and later was promoted as an Assistant Maistry. Alleging that his community certificate certifying him to belong to Kondakapu Community (Scheduled Tribe) was a fake certificate, based on a letter of the Collector, Vizianagaram dated 24.02.1996, the following charges came to be framed against the petitioner through a letter dated 02.07.1996 in the following manner:-

“That at the time of his initial appointment as mazdoor in the Trust he had produced bogus Schedule Tribe community certificate and gained employment in the Trust”.

2. In the meantime, the Port Trust had once again requested the Collector of Chennai to conduct the verification of the petitioner's community, on the ground that the petitioner has been residing in Chennai for the past 10 years. In turn, the Collector of Chennai had requested the Tahsildar, Tondiarpet, to conduct an inquiry and in the report of the Tahsildar dated 13.04.1998, it was opined that the petitioner belongs to Scheduled Tribe. While the report of the Tahsildar was under



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consideration with the Collector, the respondents had issued a fresh Charge Memo dated 05.10.2011 with the following charge:

“That at the time of his initial appointment as Mazdoor (PW) in the Trust he had produced Bogus Schedule Tribe Community Certificate and gained employment in the Trust”.

3. Not being satisfied with the petitioner's explanation dated 31.01.2012 for the aforesaid Charge Memo dated 05.10.2011, a domestic inquiry was conducted. In the inquiry, a letter of the Collector of Vizianagaram dated 24.02.1996 was marked and based on the said letter, the Inquiry Officer had held the charge against the petitioner as 'proved', through his report dated 14.09.2012. The further explanation of the petitioner herein dated 01.10.2012 was not accepted and ultimately, the impugned order of dismissal was passed on 10.05.2016.

4. The learned counsel for the petitioner predominantly raised the ground that the inquiry report, as well as the consequential dismissal order, is vitiated since the contents of the letter dated 24.02.1996 was not proved through any witness. Secondly, he would submit that when the



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respondents had earlier framed charges on 02.07.1996, alleging that the petitioner's community certificate was bogus, the same set of charges cannot be once again framed against him on 05.10.2011. Thirdly, the learned counsel also placed reliance on the report of the Tahsildar of Tondiarpet dated 13.04.1998, which evidences that the petitioner belongs to Schedule Tribe Community, as well as his request in this regard to the respondents to keep the departmental action pending till finalization of the inquiry by the Collector of Chennai and inspite of the same, the respondents have disregarded his request, as well as the report of the Tahsildar and proceeded with the inquiry based on the original letter of the Collector of Vizianagaram. The learned counsel further submitted that in the absence of any inquiry or cancellation of the community certificate by the concerned Revenue Authority, a mere letter alleging that the community certificate is bogus, cannot be relied upon.

5. Per contra, the learned counsel for the respondents/Port Trust placed reliance on the averments in the counter-affidavit filed by them and submitted that pursuant to the Collector's letter dated 24.02.1996, an inquiry was conducted whereby, the petitioner was given due opportunity



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and all his requests and representations were also considered. It is based on the report of the Inquiry Officer that the Disciplinary Authority had passed the order of dismissal. The learned counsel further submitted that it is not required to send a report to the petitioner or to conduct the inquiry by the Collector since the Revenue Authority of Andhra Pradesh has clearly declared that the certificate in question has not been issued by the Authority as per the records and hence, it is construed that the certificate itself is bogus. The learned standing counsel submitted that no inquiry is needed since the Collector has concluded that no such caste certificate was issued from their Office.

6. I have given careful consideration to the submissions made by the respective counsels.

7. Insofar as the first ground raised by the learned counsel for the petitioner with regard to the validity of the report produced in the inquiry, the Hon'ble Supreme Court in the case of '**Roop Singh Negi Vs. Punjab National Bank & others**' reported in '**(2009) 2 SCC 570**', had dealt with the manner in which the production of document in a departmental inquiry



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requires to be proved. As per the said decision, the contents of the documentary evidence has to be proved by examining the witnesses. Such a proposition was made in the following manner:

.... *“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence....”*

8. As held in the aforesaid decision, when the charge against the petitioner was only on the basis of a letter of the Collector, Vizianagaram claiming that the certificates produced by the petitioner was not issued



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from their office, the contents of that letter can be proved only through statements of the Collector or other persons connected with the Collector's Office.

9. Thus the Inquiry Officer's reliance on the letter of the Collector, Vizianagaram dated 24.02.1996, without examining any witnesses to substantiate the contents of the letter, would stand vitiated in view of the ratio laid down in the aforesaid decision.

10. Likewise, it is further seen that the respondents had earlier framed charges through a notice dated 02.07.1996, in the following manner:-

“That at the time of his initial appointment as mazdoor in the Trust he had produced bogus Schedule Tribe community certificate and gained employment in the Trust”.

11. However, without proceeding any further on this Charge Memo, which is termed as a communication, the respondents have proceeded to frame the following fresh charge through their Charge Memo dated



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05.10.2011:-

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“That at the time of his initial appointment as Mazdoor (PW) in the Trust he had produced Bogus Schedule Tribe Community Certificate and gained employment in the Trust”.

12. A reading of the original Charge Memo dated 02.07.1996 and the subsequent Charge Memo dated 05.10.2011 would reveal that both the charges are identically verbatim. It is not the case of the respondents that earlier the Charge Memo dated 02.07.1996 was dropped. The respondents have also not assigned any valid reason in their second Charge Memo as to why they had discarded the earlier Charge Memo and proceeded to issue the second one. Thus, the issuance of a Second Charge Memo either without dropping the first Charge Memo or assigning any valid and acceptable reason in the second Charge Memo for ignoring the first Charge Memo cannot be sustained, in view of the following decisions.

13. The Hon'ble Division Bench of this Court in the case of '**A. Obaidhullah Vs. The State of Tamil Nadu, Home Department**' reported in '**2002 (5) CTC 380**', had held this possession in the following manner:-



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10..... “We have already mentioned that the second charge memo dated 5-12-90 does not contain any reason for cancellation of first charge memo dated 29-8-78. It is not the case of the department that new materials have been gathered and based on the same, the second charge memo dated 5-12-90 came to be issued. On the other hand, the very same charge based on the report of the Commission was reiterated in the fresh charge memo dated 5-12-90. The tribunal has overlooked the issuance of the second charge memo superseding the earlier charge memo without adequate reason which is fatal to the disciplinary proceedings.

In the light of the principles laid down in the Supreme Court decision, in the absence of any explanation for not pursuing the first charge memo and issuance of fresh charge memo after a period of 12 years cannot be sustained.....”

In the aforesaid decision, the Hon'ble Division Bench had placed reliance on a Constitutional Bench judgment of the Hon'ble Supreme Court in **'K.R. Deb Vs. Collector of Excise, Shillong'** reported in **'1971 (2) SCC**



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102', wherein, the main contention before the Hon'ble Supreme Court was that a third inquiry, while two earlier reports were in existence, cannot be sustained. Accepting the contention, the Hon'ble Supreme Court had held that, when the Disciplinary Authority had enough powers to reconsider the evidence itself, a third inquiry was unwarranted.

14. In '*Parameswaran Vs. State of Tamil Nadu, Rural Development Department*' reported in '**2006 (1) CTC 476**', when two Charge Memos were already issued on the employee and he had also submitted his explanation, a third Charge Memo was issued which was quashed by an Hon'ble Division Bench of this Court, by holding as follows:-

..... “10. In the case before us, the alleged failure to utilise the advance amount and failure to complete the work entrusted to him by utilising the funds had taken place prior to 1985. It is not a case of misappropriation or retention of Government money. On the other hand, the allegation relates to negligence in monitoring the projects and non-utilising the funds within the time prescribed. Taking



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note of the same and in the light of unexplained reason for not pursuing the first and second charge memos, when admittedly, the petitioner submitted his explanations denying all the allegations and considering the length of time involved, viz., 20 years, we are of the view that the judgment of the Supreme Court referred to above (2005 (4) CTC 403), is directly on the point. Further, the petitioner has already suffered enough mental agony on account of the protracted disciplinary proceedings. These material aspects have not been considered by the Tribunal, which has committed an error in dismissing the original application filed by the petitioner.

15. The aforesaid extracts are self-explanatory. As such, issuance of a second Charge Memo in the present case, without dropping the first Charge Memo or adducing any valid and acceptable reason for issuance of second Charge Memo, is opposed to the ratio laid down in the aforesaid decision and hence, illegal.

16. Thus, the impugned punishment, which culminated from the second Charge Memo dated 05.10.2011, without dropping the earlier



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charges dated 02.07.1996, cannot be sustained and on this ground also, the consequential punishment may require interference.

17. The learned counsel for the petitioner also placed reliance on the report of the Tahsildar dated 13.04.1998, which evidences that the petitioner herein belongs to Schedule Tribe community. At the instance of the Chennai Port Trust to the Collector, Chennai, to conduct an inquiry with regard to the validity of the petitioner's community certificate, the petitioner herein had made a request to the respondents to keep the disciplinary proceedings in abeyance, pending the outcome of the Collector's final report, which request was ignored and a fresh Charge Memo was issued against him.

18. Though the report of the Tahsildar, as well as the request of the petitioner, did not form part of the inquiry report, this Court is of the view that such reports and representations may have a persuasive value, co-jointly considered along with procedural irregularities adopted during the course of inquiry.



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19. Insofar as the objections raised by the learned counsel for the respondents, is concerned, the same does not deserve any consideration since the inquiry itself is in gross violation of the procedure to be adopted during the course of a departmental inquiry. In normal circumstances, this Court may have remanded back the matter to the respondents to conduct a fresh inquiry. However, in the instant case, the proceedings came to be initiated in the year 1996 and the petitioner has also reached the age of superannuation in the year 2021 and by remanding back the matter, serious prejudice would be caused to the petitioner herein. This apart, this Court is of the view that since the petitioner herein was not in employment from the date of his dismissal, this Court does not intend to remand back the matter in the light of the peculiar circumstances of his service career, the ends of justice could be secured if the arrears of salary from the date of dismissal till the date of his superannuation, are withheld.

20. In the light of the above findings, the impugned order dated 10.05.2016, is hereby quashed. Consequently, there shall be a direction to the respondents to forthwith pass orders, to the effect that the petitioner had continued in his service from 10.05.2016 onwards and notionally

